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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,349	02/24/2004	Antoine LaFont	S63.2-9776US02	8749

490 7590 11/16/2006

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

SCHILLINGER, ANN M

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/785,349

Applicant(s)

LAFONT ET AL.

Examiner

Ann Schillinger

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Mikus et al. (U.S. Application No. 2002/0035391). Mikus et al. discloses all of the following regarding claim 1: a method of treating a bodily vessel comprising the steps of (pg. 2, paragraph 0024): inserting a catheter having a distal portion into a body vessel, the distal portion having an expandable region, an expandable stent being disposed about at least a portion of the expandable region; advancing the distal portion to a desired location in a bodily vessel; delivering the stent to the desired location by expanding the expandable region from an unexpanded diameter to an expanded diameter (pg. 2, paragraph 0025); delivering heat to the stent during the expansion of the expandable region (pg. 3, paragraphs 0031 and 0036).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Mikus et al. in view of Boylan et al. (U.S. Application No. 2003/0187497). Mikus et al. does not disclose a stent that is at least partially constructed of stainless steel. Boylan et al., teaches the following regarding claim 2: the stent is at least partially constructed of stainless steel (pg. 1, paragraph 0007).

Regarding claim 6, Mikus et al. discloses the following: a method of treating a bodily vessel comprising the steps of (pg. 2, paragraph 0024): advancing a stent delivery catheter comprising a stent disposed about at least a portion of an expandable region to a desired location in a bodily vessel; delivering the stent in the bodily vessel at the desired location (pg. 2, paragraph 0025); and heating the stent during delivery (pg. 3, paragraph 0031 and 0036). Mikus et al. does not disclose the use of stainless steel to construct the catheter, but Boylan et al. teaches the following: constructed substantially of stainless steel (pg. 1, paragraph 0007) for the purpose of opening and maintaining the patency of the body lumen.

Regarding claim 7, Mikus teaches the following: the stent is conductively heated by directing energy to the stent through a portion of the catheter (pg. 3, paragraph 0031 and 0036).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the initial stent of the Mikus et al. reference in order to permanently deform the stent and hold open and maintain the patency of the body lumen.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikus et al. in view of Guglielmi et al. (U.S. Patent No. 6,011,995). Mikus et al does not disclose the use of heated contrast agent, but '995 teaches the following regarding claims 4 and 5: the expanded

Art Unit: 3738

region is expanded by delivering a heated contrast agent to the expandable region; a heated contrast agent is delivered to the distal portion as the stent is delivered (col. 13, lines 28-32).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a contrast agent because it would allow for observance of the expansion of the stent and the behavior of the vessel wall.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mikus et al. in view of Boylan et al. and in further view of Guglielmi et al. Mikus et al. and Boylan et al. do not explicitly disclose that the bodily vessel will also be heated when the stent is heated. However, '995 teaches the following: the bodily vessel is heated by the stent (col. 2, lines 1-7 and 25-26), which would prevent restenosis.

### ***Response to Arguments***

Applicant's arguments filed on January 4, 2006 have been fully considered but they are not persuasive. The applicant contends that Mikus et al. does not teach an "expandable stent being disposed about at least a portion of the expandable region." However, Figures 6 and 7 in Mikus et al. discloses the stent being disposed about at least a portion of the expandable region. With this disclosure in Mikus et al., the additions of Boylan et al. and Guglielmi et al. are adequate to address the elements not taught by Mikus et al.

Regarding the word "about," the argument filed by the Applicant's representative is insufficient to overcome the rejection made on the independent claims. The term "about" has

Art Unit: 3738

been interpreted broadly and does not provide any indication as to what range of specific activity is covered.

The Examiner has interpreted the word “about” broadly. In the Merriam-Webster Dictionary the broadest meaning of the word “about” is the following: “...reasonably close to...,” “...in the vicinity...,” etc. For the above reasons, the Examiner maintains the previous rejection.

In order to overcome the rejection, the Applicant’s representative can substitute the word “about” by the word “above.”

### ***Response to Arguments***

Applicant's arguments filed 10/16/2006 have been fully considered but they are not persuasive. Applicant contends that in claims 1 and 6 the language such as “about which” and “disposed about” was not interpreted properly. However, it is when the applicant acts as his or her own lexicographer to specifically define a term of a claim as long as it is not contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The terms in discussion are therefore open to the broadest reasonable interpretation because the specification does not clearly redefine the term. Applicant also contends that Mikus does not teach delivering a stent to a certain location via the use of the stent’s expandable region, but this is disclosed in paragraph 0025. Because the

Art Unit: 3738

independent claims are not in condition for allowance and because of the references cited above, the dependent claims in the application are rejected.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
November 6, 2006

*A. Stewart*  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**